IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.658 OF 1993

Bawasingh Puransingh Khaira ..... Appellant.

Verus.

The State of Maharashtra ..... Respondents.

Mr.S.V.Marwadi,Advocate for the appellant.

Mr.A.M.Shringarpure,APP for the State.

CORAM: V.M.KANADE,J.

DATE : 6th May 2005.

-J U **D G E M E N T**-

1. The appellant is challenging the Judgement and order passed by the Special Judge of Greater Bombay in Special Case No. 24/89. By the said Judgement and Order dated 15th October 1993 the trial court was pleased to convict the appellant under the provisions of Prevention of Corruption Act,1988.

2. Appellant is the original accused no.2 in Special Case NO. 24/89. Charge was framed against the accused for having committed an offence punishable under Section

7 of Prevention of Corruption Act 1988 read with Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act. Prosecution case in brief is that, accused was attached to rationing office, Kurla and had demanded Rs.200/- as bribe on 28/9/88 and had thereafter demanded and accepted an amount of Rs.200/- as bribe on 6/10/88, for providing full quota of kerosene to PW 1 Ishwarlal Jivraj, who was the owner of approved rationing shop at Kurla(E),Bombay. Prosecution case in brief is that accused was the Assistant Rationing Officer and Rationing Officer Mr.Shelke used to sit in the rationing office in Kurla and was the immediate superior of the appellant Bawasingh Khaira. Case of the prosecution is that complainant PW 1 had licence in his name to sale various commodities which can be termed as rationing commodities. PW 1 was allotted particular quota of kerosene and during the relevant period , kerosene was one of the rationed items and supply was regulated through the rationing department. Prosecution case is that PW 2 Inspector visited shop of PW 1 on 28.9.88 and informed him that he was called by the rationing officer Mr. Shelke to his office. Accordingly PW 1 visited office of rationing officer Mr.Shelke. Prosecution case is that accused Bawasingh was also present when he entered the cabin of Mr. Shelke. Prosecution case is

that Mr. Shelke suggested to P.W.1 that if he wanted the action which was proposed against him to be dropped, he should pay monthly hafta of Rs.400/-. Prosecution case is that accused Bawasingh told complainant to accept demand made by Mr. Shelke. It is the prosecution case that after complainant came out of the cabin of Shri Shelke, accused Bawasingh told him that if he wanted to have full quota of kerosene, he should pay additional amount of Rs.200/- which offer was accepted by the complainant. Thereafter complaint was lodged by PW 1 Ishwarlal with Anti Corruption Bureau and after various formalities were completed , members of the raiding party went to rationing office, apprehended Mr.Shelke after amount was demanded and accepted after pre arranged signal was given by complainant.

3. Prosecution filed two charge sheets in respect of the said transaction . One charge-sheet was relating to Special Case No. 24/89 regarding the offence which was allegedly committed by accused Mr.Shelke, in respect of demand and acceptance of bribe of Rs. 200/- on 6.10.88 .Second charge-sheet related to the present case i.e. Special Case No.25/89 in which it was alleged that the accused Bawasingh had demanded bribe of Rs.200/- from PW 1 on 28.9.88 and had accepted the said amount of Rs.200/-

as bribe on 6.10.88.

4. Mr.Shelke was convicted by the trial court in Special Court No.24/89 and present appellant was convicted in Special Case No.25/89.

5. Mr.Shelke preferred Criminal Appeal No.659/93 against the Judgement and Order passed by the Special Court for Greater Bombay and the present appellant has filed Criminal Appeal No. 658/93, in respect of conviction awarded by the Special Judge in Special Case No.25/89.

6. Though both these cases arise out of the same transaction, separate charge-sheet was filed in view of separate demand made by the present appellant. However, fact remains that prosecution has examined same set of witnesses in respect of both these mattes.

7. Criminal appeal No.659/93 came up for hearing before this Court and Criminal Appeal was allowed by Judgement and Order dated 15.2.2005 and Judgement of the trial court was quashed and set aside and the witnesses examined by the prosecution were dis-believed by this Court for reasons recorded in the said Judgement and

order.

8. Learned counsel for appellant has taken me through the Judgement and Order of Criminal Appeal No.659/93 as also evidence adduced by the prosecution in respect of PW 1 and other witnesses which were also examined by the prosecution in other case. He submitted that since this Court had dis-believed testimony of PW 1 and other witnesses and since the present appeal arises out of the same set of facts and circumstances, present appeal may also be allowed.

9. After having heard the learned counsel for appellant and learned Additional Government Pleader for State, I am of the view that since the testimony o fPW 1 has been dis believed by this Court in respect of demand and acceptance of bribe by the Rationing OFficer Mr. Shelke, for the same reasons his testimony will be discarded in the present case. IN view of the detailed Judgement and Order passed by this Court on 15.2.2005 in the companion Appeal No.659/93 and for reasons recorded therein, the present appeal also will have to be allowed. Accordingly the Appeal is allowed. Judgement and order passed by the Special Judge, Greater Bombay dated 15.10.93 is set aside and quashed. Accused is

acquitted of the offence with which he is charged. Bail Bond of the accused stands cancelled.

(V.M.KANADE,J.)